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MPR Fleet Services, Inc. and International Association of Machinists and Aerospace Workers, District Lodge 94/Local Lodge 1186, AFL-CIO.
Case 21-CA-32582

October 29, 1998

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Upon a charge filed by the Union on February 25, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on September 1, 1998, against MPR Fleet Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 28, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On September 30, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter mailed and faxed September 16, 1998, notified the Respondent that unless an answer were received by September 23, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation, with its principal offices located at 532 Monterey Pass Road, Monterey Park, California, and facilities located at 1055 North Alameda Street, Los Angeles, California; 11236 Playa Court, Culver City, Cali-

fornia; 140 North Grand Avenue, Los Angeles, California; 13851 Fiji Way, Marina Del Rey, California; 45000 East 60th Street West, Lancaster, California; 1703 Mountain Avenue, Monrovia, California; 29380 The Old Road, Castaic, California; and 1104 North Eastern Avenue, Los Angeles, California (the Eastern Avenue facility), has been engaged in the automotive repair and maintenance of Los Angeles County vehicles. During the 12-month period ending October 30, 1997, a representative period, the Respondent, in the course and conduct of its business operations described above, provided services valued in excess of \$50,000 to customers located within the State of California, each of which customers, during the same period of time, purchased and received at its California locations goods valued in excess of \$50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the International Association of Machinists and Aerospace Workers, District Lodge 94/Local Lodge 1186, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about September 18, 1997, the Respondent, acting through President Ramon Maldonado, at the Eastern Avenue facility, interrogated its employees about their union membership, activities, and sympathies, and threatened its employees that the Respondent would declare bankruptcy if they selected the Union as their bargaining representative.

On about September 19, 1997, the Respondent, acting through Vice President Fred Balderama, at the Eastern Avenue facility, interrogated employees about their union membership, activities, and sympathies.

On about September 26, 1997, the Respondent laid off its employee Ricardo Garcia. The Respondent engaged in the conduct described above because Garcia joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by laying off Ricardo Garcia, we shall order the Respondent to offer the discriminatee full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful layoff, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, MPR Fleet Services, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their union or other protected concerted activities.

(b) Threatening employees that the Respondent will declare bankruptcy if employees choose to be represented by a union.

(c) Laying off or otherwise discriminating against its employees because they engage in union or other protected concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Ricardo Garcia full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Ricardo Garcia whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoff of Ricardo Garcia, and within 3 days thereafter notify him in writing that this has been done and that the layoff will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and

copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Eastern Avenue facility copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 18, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 1998

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees regarding their union or other protected concerted activities.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT threaten employees that we will declare bankruptcy if employees choose to be represented by a union.

WE WILL NOT layoff or otherwise discriminate against our employees because they engage in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Ricardo Garcia full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Ricardo Garcia whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful lay-off of Ricardo Garcia, and within 3 days thereafter notify him in writing that this has been done and that the layoff will not be used against him in any way.

MPR FLEET SERVICES, INC.